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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/728,401

12/08/2003

David J. Broel

11287

9772

208

7590

05/25/2006

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EXAMINER

VALENTI, ANDREA M

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/728,401

Applicant(s)

BROEL, DAVID J.

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4 and 9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, it is unclear if applicant is claiming a combination/subcombination since applicant positively claims the flower holder, but it is unclear if the examiner is claiming the vase? For examination purposed, the examiner has viewed it that the applicant has not positively claimed the subcombination of the vase in combination with the flower holder.

Claims 3 and 4 are rejected as being dependent upon a rejected base claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,450,692 to Ruibal in view of French Patent FR 2620591 to Roder.

Regarding Claim 1, Ruibal teaches a cemetery flower holder (Ruibal Fig. 1 #12) **for insertion into a cemetery vase** (this language is merely intended use and the structure of Ruibal must merely be capable of insertion into a vase which it is) comprising a shaft and multiple elongated vertically deformable extensions (Ruibal Fig. 1 #16) extending straight outwardly from the shaft and being disposed substantially 90 degrees thereto said extensions **deform by abutting with the inner surface of said vase** (this language merely suggests that the structure be capable of that function and does not positively claim insertion or combination with the vase, and Ruibal's structure is capable of this function) by means of the length of the extensions being greater than the distance between the shaft and the inner surface of the vase, said extensions being respectively horizontally and vertically spaced, a base shaft (Ruibal Fig. 5 #14 below element #48) and an upper shaft (Ruibal Fig. 5 #14 above element #48) with a disc (Ruibal Fig. 3 #30) disposed there between.

Ruibal is silent on a foam insert substantially enveloping the upper shaft. However, Roder teaches a foam insert. It would have been obvious to one of ordinary skill in the art to modify the teachings of Ruibal by placing the foam of Roder (Roder English translation page 5 line 8) in Ruibal (Ruibal #48) for the advantage of arranging cut flowers in a vertical array.

Ruibal as modified is silent on the extensions being integrally joined to the shaft. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Ruibal at the time of the invention since the modification is merely making a known element integral [*In re Larson*, 340 F.2d 965, 967, 144 USPQ 347, 349

(CCPA 1965)] for the known advantage of reducing the likely hood of miss placing pieces; to customize it to a particular container size; and for ease of manufacturing.

Regarding Claim 3, Ruibal as modified teaches the end of the upper shaft remote from the disc is enlarged (Ruibal Fig. 2 #26 attaches to #14 and thus enlarges the width of the shaft).

Regarding Claim 4, Ruibal as modified by Roder teaches the disc comprises an upper surface and wherein at least one prong extends upwardly from the upper surface (Roder Fig. 4).

Regarding Claim 9, Ruibal teaches a cemetery flower holder (Ruibal #12) and a container/pot (Ruibal Fig. 1 #17) comprising a shaft (Ruibal Fig. 1 #14) and multiple elongated vertically deformable extensions (Ruibal Fig. 1 #16) extending outwardly from the shaft substantially 90 degrees thereto with the ends thereof in abutment with the inner surface of the container/pot and said extensions are deformed (this limitation inherently merely depends on the size of element #17 selected, the extensions are capable of deforming for a tight friction fit since the proposed embodiment is only 1/8 inch plastic or steel it will deform depending on the size of the selected container) by means of the length of the extensions being greater than the distance between the shaft and the inner surface of the holder said shaft comprising a base shaft (Ruibal Fig. 5 #14 below #48) and an upper shaft (Ruibal Fig. 5 #14 above #48) with a disc (Ruibal Fig. 3 #30) disposed there between, said disc comprising an upper surface.

Ruibal is silent on at least one prong extending upwardly from the upper surface. However, Roder teaches a plant support attached to a disc with a prong extending from

the upper surface of the disc (Roder #4). It would have been obvious to one of ordinary skill in the art to modify the teachings of Ruibal with the teachings of Roder at the time of the invention for the advantage of securing foam to the disc for floral displays as taught by Roder.

Ruibal as modified teaches a container/pot, but is silent on explicitly teachings a vase. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Ruibal at the time of the invention since the modification is merely the selection of an old and notoriously well-known alternate equivalent container selected for a desired aesthetic appearance and does not present a patentably distinct limitation.

### ***Response to Arguments***

Applicant's arguments filed 15 March 2006 have been fully considered but they are not persuasive.

Applicant's claim language in claim 1 in regards to the deformation of the extensions is still presented in the form of functional language that the device at hand must merely be capable of performing that function. Examiner maintains that whether or not the extension are integral or separate from the shaft, depending on the size of the container they are placed in they, will bend/deform if the container is smaller than the length of the extension. The extensions are merely thin 1/8 inch plastic or steel (Ruibal Col. 3 line 6-7) that if forced into a small container will deform. Furthermore, merely making a known element integral is an engineering design choice that would be obvious to one of ordinary skill in the art for the reasons stated in the above paragraphs.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

23 May 2006